

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**Interim Application No.3894 of 2024
in
Criminal Appeal No.1061 of 2024**

Jaideep Dilipbhai Jilka
Age:28 years, Occ: Service,
R/at: Room No.3, Near Amba
Mata Mandir, Debar Road,
Street 1, Rajkot, Gujarat.
(At present Kalyan Central Prison) ... Applicant

Versus

1. State of Maharashtra
(At the instance of Central
Police Station, Thane)

2. XYZ (victim)
Through Central Police Station ... Respondents

Mr Sushrut Jadhwar, for the applicant.
Mr MG Patil, APP, for respondent No.1/ State.
Ms Aishwarya Sharma, for respondent No.2.
PSI PB Kobarne, Central Police Station.

**Coram: R.N. Laddha, J.
Date: 19 March 2025**

P.C.:

. Heard Mr Sushrut Jadhwar, the learned Counsel appearing on behalf of applicant, Mr MG Patil, the learned Additional Public Prosecutor representing respondent No.1/State, and Ms Aishwarya Sharma, the learned Counsel appearing for respondent No.2.

2. The applicant faced trial in Sessions Case No.250 of 2021 before the Sessions Court at Kalyan for committing the offences punishable under Sections 376, 384, 385 and 506 of the Indian Penal Code ('IPC') and Sections 66(e), 66(c) and 67 of the Information Technology Act, 2000 ('IT Act'). By a judgment and order dated 21 August 2024, the trial Court acquitted the applicant of the offence punishable under Section 384 IPC and Sections 66(e), 66(c) and 67 of the IT Act and convicted the applicant under Sections 376, 385 and 506 IPC. The applicant was sentenced as follows: (i) rigorous imprisonment of seven months and a fine of Rs.4,000/- (with default stipulations) for the offence punishable under Section 376 IPC, (ii) rigorous imprisonment of two years and a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 385 of IPC, and (iii) rigorous imprisonment of six months for the offence punishable under Section 506 IPC. These sentences were directed to run concurrently.

3. Dissatisfied, the applicant preferred an appeal before this Court and, by the present application, seeks suspension of the sentence and release on bail.

4. The learned Counsel appearing on behalf of the applicant argues that there are considerable shortcomings in the prosecution's evidence and claims that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. He further submits that the applicant and the victim were of legal age and that their relations were consensual in nature. The applicant has already served more than half of the sentence, is willing to cooperate fully with the appeal proceedings, and prays for his release on bail pending the outcome of the appeal.

5. The learned Additional Public Prosecutor representing respondent No.1/ State and the learned Counsel appearing for respondent No.2 jointly oppose the applicant's request, citing the seriousness of the charge on which the applicant has been convicted and that the evidence on record strongly supports the prosecution's case.

6. This Court has given anxious consideration to the rival contentions and perused the records.

7. It is a well-settled position in law that the appellate Court may leniently consider a convict's request for suspension of the sentence in cases where the term of the sentence is fixed except in exceptional circumstances or where restrictions under any statute apply. If the sentence imposed cannot be suspended, the appellate Court must endeavour to adjudicate the appeal on merits, especially in cases where there is a plea for expeditious resolution. Failing to do so could jeopardise the appellant's statutory rights due to the passage of time. In situations where the appellate Court recognises that practical circumstances may hinder the prompt resolution of the appeal, it becomes essential for the Court to exercise heightened diligence in deliberating on sentence suspension. This ensures that the appeal process remains viable, meaningful, and effective. Additionally, when granting bail, the appellate Court has the discretion to impose certain conditions. A profitable reference in this regard can be made to the decision in *Bhagwan Rama Shinde Gosai v. State of Gujarat*, (1999) 4 SCC 421.

8. The maximum sentence period imposed upon the applicant is seven years. The applicant and the victim were of legal age when the alleged incident occurred. While this Court acknowledges the arguments presented by the learned APP and the learned Counsel for respondent No.2 regarding the

seriousness of the offence and the current post-conviction stage of the proceedings, it is essential to recognise that the applicant has already served three years and ten months out of the total sentence of seven years. The appeal has been filed in 2024 and is unlikely to be heard immediately due to the pendency of the older appeals. Moreover, there are no circumstances or any statutory prohibition that warrant the refusal of the relief of suspension of the sentence to the applicant. In these circumstances, a case is made out for suspension of the sentence and release on bail. Hence, the following order:

ORDER

- (i) The sentence imposed upon the applicant vide judgment and order dated 21 August 2024 passed by the Additional Sessions Judge, Kalyan, in Sessions Case No.250 of 2021, stands suspended during the pendency of the appeal.
- (ii) The applicant shall be released on bail upon executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.
- (iii) The applicant shall refrain from entering the jurisdiction of the concerned Police Station where the victim resides.

(iv) The applicant shall not contact the victim or her family members in any manner.

(v) The applicant shall keep the investigating officer informed and updated about his residential and contact details.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)